

MLC JUN 29 2005

Michael N. Milby, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION**

HECTOR MANUEL PALACIOS	§
PLAINTIFF	§
	§
VS.	§
	§
	§
HOME DEPOT U.S.A. INC.	§
DEFENDANT	§

CIVIL ACTION NO. M-05-041

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **HECTOR MANUEL PALACIOS**, (hereinafter called "PLAINTIFF"), complaining of **HOME DEPOT U.S.A. INC.**, (hereinafter referred to as "HOME DEPOT" or "DEFENDANT"), for cause of action would respectfully show the Court as follows:

I. PARTIES

PLAINTIFF is a resident of Hidalgo County, Texas.

DEFENDANT, HOME DEPOT, has been served with Citation and a copy of *Plaintiff's Original Petition* has filed an answer and its before the Court for all purposes.

II. JURISDICTION AND VENUE

The court has been removed to Federal Court under under 28 U.S.C. § 1332 as it is a civil action wholly between citizens of different states, and the amount in controversy is in excess of the Court's jurisdictional minimum for diversity cases.

III. SUMMARY OF FACTS

On or about December 21, 2003, *Plaintiff* went to the store owned by *Defendant Home Depot* located at 801 Trenton Road, McAllen, Texas. *Plaintiff* stopped to pick up home furnishings with his wife. *Plaintiff* had gone to the bathroom and was getting ready to walk out and meet his wife back in line. All of a sudden and unexpectedly *Plaintiff* slipped as he stepped on a liquid substance that was found on the floor. There were no cones or caution signs in the area where *Plaintiff* fell. In addition, the floor in the area was uneven, and such

faulty design contributed to the fall. *Plaintiff* sought medical attention for his injuries. Such slip and fall and the resulting impact caused *Plaintiff* to suffer personal injuries, permanent impairment, and future medical expenses.

IV. CAUSE OF ACTION:

A. NEGLIGENCE

At the time of the accident made the basis of these claims, *Defendant Home Depot*, owed a legal duty to Plaintiff of maintaining the premises in a safe condition. *Defendant Home Depot*, breached its duty when:

- A. *Defendant Home Depot* failed to warn *Plaintiff* of the dangerous area where the water was not noticeable so that *Plaintiff* could go around the area;
- B. *Defendant Home Depot* failed to give adequate and comprehensive warnings to *Plaintiff* by placing caution cones where the water was not noticeable;
- C. *Defendant Home Depot* failed to properly maintain and discover the dangerous area by placing caution cones and visually inspecting where the water was not noticeable;
- D. *Defendant Home Depot* failed to exercise reasonable care to reduce or eliminate the risk that existed on *Defendant Home Depot*'s premises by inspecting the area and placing caution cones where the water was not noticeable;
- E. *Defendant Home Depot* failed to properly inspect the area of the floor which the water was on the floor; and
- F. *Defendant Home Depot* failed to maintain a proper procedure at its store wherein the *Defendant Home Depot*'s employees were instructed to make periodic inspections of the store's floor to prevent the creation or existence of an unreasonably dangerous condition.
- G. *Defendant Home Depot* failed to detect and/or correct, and negligently approved the uneven surface which contributed to Plaintiff's fall.

Plaintiff's breach of duties proximately caused the plaintiff's injury. The elements outlined above constitute negligence on the part of *Defendant Home Depot*.

B. PREMISES LIABILITY

At the time of the accident made the basis of these claims, Plaintiff was an invitee because he was on the premises with the *Defendant Home Depot*'s knowledge and for the mutual benefit of both Plaintiff and Defendant. At the time of the accident made the basis of these claims, *Defendant Home Depot* was the possessor of the premises where the incident occurred. At the time of the accident made the basis of these claims, a condition on the premises posed an unreasonable risk of harm, and *Defendant Home Depot* knew or should have known of the danger. *Defendant Home Depot* breached its duty of ordinary care by both, failing to adequately warn plaintiff of the condition, and failing to make the condition reasonably safe. Finally, *Defendant Home Depot*'s breach proximately caused *Plaintiff's* injuries.

C. RESPONDEAT SUPERIOR

Plaintiff was injured as a result of *Defendant Home Depot*'s negligence and premises liability. *Defendant Home Depot* acting by and through its agents, servants, or employees created such negligence and premises liability to invitee. *Defendant Home Depot*'s negligent acts were committed while the its agents, servants, or employees were acting within the scope of employment.

VI. CONTRIBUTORY NEGLIGENCE

Nothing *Plaintiff* did or failed to do contributed to the cause of the incident made the basis of this lawsuit.

VII. DAMAGES

By the reason of all the foregoing acts and omission, each and all of which constitute negligence, *Plaintiff* has sustained injuries and damages in an amount well above the jurisdictional amount of this Court for which he now sues, including but not limited to the following:

- A. Damages for the reasonable and necessary expenses which *Plaintiff* has incurred up until the time of trial as a result of said incident made basis of this lawsuit;
- B. Damages for reasonable and necessary medical expenses which *Plaintiff* has incurred in the past and will incur in the future as a result of said injuries;
- C. Damages for reasonable and necessary expenses for medication which *Plaintiff* has

incurred to date and will incur in the future as a result of said injuries;

- D. Damages for the past and present physical pain and suffering that *Plaintiff* has suffered as a result of the accident in question and resulting injuries;
- E. Damages for future physical pain and suffering to be suffered by *Plaintiff* as a result of the incident in question and resulting injuries;
- F. Damages for past, present and future mental anguish suffered by said *Plaintiff* as a result of the incident made basis of this lawsuit and resulting injuries; and
Plaintiff respectfully reserves the right to amend this petition and to allege specifically and future acts and/omissions as may be developed during the trial of this cause.

VIII. TOTAL DAMAGES SOUGHT

Plaintiff seeks at least \$250,000.00 but not more than \$450,000.00 from *Defendant Home Depot* as compensation for the injuries and damages that he has suffered and incurred as a result of the *Defendant Home Depot*'s negligence.

Furthermore, *Plaintiff* specifically reserves the right to amend and plea for a specific amount in the future as his conditions shall so indicate.

IX. PRAYER

By reason of the above and foregoing, *Plaintiff* has been damaged in a sum within the jurisdictional limits of this Court.

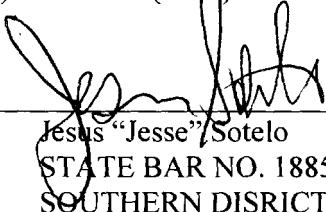
Wherefore, *Plaintiff* prays that the *Defendant Home Depot* be cited to appear and answer herein; that upon trial of this cause *Plaintiff* recover;

- 1. Judgment against *Defendant Home Depot* for *Plaintiff*'s damages as set forth above, and in an amount within the jurisdictional limit of this Court;
- 2. Judgment against *Defendant Home Depot* for exemplary punitive damages;
- 3. Interest in said judgment at the legal rate from the date of judgment;
- 4. Pre-judgment interest on *Plaintiff*'s damages as allowed by law;
- 5. Cost of Court; and
- 6. Such other and further relief to which *Plaintiff* may be justly entitled to both in law and in equity.

Respectfully submitted,

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By:


Jesus "Jesse" Sotelo
STATE BAR NO. 18855725
SOUTHERN DISTRICT NO. 14234
ATTORNEY FOR PLAINTIFF

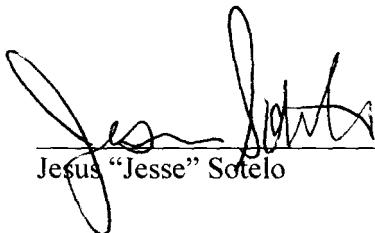
CERTIFICATE OF SERVICE

I, do hereby certify that on the 29th day of June 2005, a true and correct copy of the foregoing instrument has been forwarded to Defendant's attorneys as follows:

VIA FACSIMILE: (469) 519-2555

VIA FIRST CLASS MAIL

Mr. Arthur K. Smith
LAW OFFICES OF ARTHUR K. SMITH
507 Prestige Circle
Allen, Texas 75002


Jesus "Jesse" Sotelo